IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3654 of 1992

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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IBRAHIM ALIBHAI VEHMI & 1 - Petitioner(s)
Versus
AMINA WD/O ABDULLAH ISMALI ADAM & 6 - Respondent(s)

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Appearance :
MR MA KHARADI for MR MB FAROOQUI for Petitioner(s) : 1 - 2.
MR MTM HAKIM for Respondent(s) : 1 - 3.
Respondent(s) : 4 - 7 SERVED .

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 13/08/2007

ORAL JUDGMENT

The petitioners, co-owners of the disputed land Block No.393, Survey No.99/1 admeasuring 3-Acres-17-Gunthas of village Japar, taluka and District Bharuch

has preferred the present petition to challenge the judgment and order dated 31st May, 1991 passed by the State Government [Additional Chief Secretary (Appeals), Revenue Department] in Revision Application No.232/1984.

The subject matter of dispute is the revenue entry No.3527 dated 4th June, 1973 made in the village form No.8. From the record as it is, it appears that originally the land stood in the name of the petitioner no.2 Valimohammed Ismail Khandhiya. By impugned entry No.3527 dated 4th June, 1973, the name of the petitioner no.1 Ibrahim Vehmi was entered as a co-owner. On 12th October, 1973 the said entry was certified by the Circle Officer, Nabipur. The said entry was challenged by the respondents before the Assistant Collector on 9th March, 1984. According to the respondents, the said land was subject matter of consolidation proceedings under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as, **“the Act of 1947”**). Under the consolidation proceedings under the Act of 1947 the lands of village Japar were reconstituted.

The land Survey No.99/1 admeasuring 3-Acres-17-Gunthas was reconstituted into Block No.393 admeasuring 4-Acres-17-Gunthas. The said land Block No.393 stood in the name of the respondents. The respondents were allotted land admeasuring 2-Acres-37-Gunthas out of the said land Block No.393 and the petitioner no.1 Valimohammed Ismail Khandhiya was allotted land admeasuring 1-Acre-20-Gunthas out of the said Block No.393.

The said appeal made to the Assistant Collector came to be rejected on 7th May, 1984. Feeling aggrieved, the respondents preferred revision application before the District Collector, Bharuch. The District Collector, Bharuch, by his order dated 21st August, 1984, rejected the said revision application. The District Collector, Bharuch observed that the application for partition of the land made by the respondents was rejected by the Collector, Bharuch on 10th September, 1980; the revision preferred before the State Government also came to be rejected and that the challenge to the disputed entry was grossly belated. It was observed that though the

respondents were aware of the disputed entry since the year 1980, the challenge was made in the year 1984 i.e. Long after the expiration of the period of limitation of one year.

Feeling aggrieved, the respondents preferred revision application before the State Government which came to be allowed by the impugned judgment and order dated 31st May, 1991. The State Government recorded that while certifying the entry no.3527 the fact of the consolidation proceedings was not taken into consideration and that the respondents had applied for certified copy of the disputed entry in the year 1982. After the receipt of the certified copy, the appeal was preferred before the Assistant Collector. The State Government was, therefore, pleased to set-aside the orders dated 7th May, 1984 made by the Assistant Collector and dated 21st August, 1984 made by the District Collector. Therefore, the present petition.

Mr.Kharadi has submitted that by the disputed entry no.3527 the name of the petitioner no.2, a co-

sharer was entered. The challenge to the said entry was grossly belated as observed by the Assistant Collector and the District Collector. The State Government ought not to have interfered in such stale claim. He has further submitted that in the proceedings initiated by the respondents under the Bombay Land Revenue Code, the State Government has set-aside the disputed entry on the ground that it was contrary to the provisions contained in the Act of 1947. The order of the State Government is, therefore, unsustainable.

Mr.Hakim has contested the petition. He has supported the order made by the State Government.

It must be noted at the outset that though the present petition has been filed before 15 years in the year 1992, till the date the petitioners have failed to produce relevant records before this Court. Neither the disputed entry no.3527 is before the Court nor the grounds on which it was challenged under the Bombay Land Revenue Code. As noted by the State Government, the disputed entry was not brought

to the knowledge of the respondents till the year 1980. The respondents, thereafter, applied for certified copy of the said entry. After obtaining the certified copy, the same was challenged before the Assistant Collector. In the circumstances, the State Government has held that the challenge to the disputed entry ought to have been decided on merits rather than rejecting the same as time-barred. This Court, in exercise of supervisory jurisdiction under Article 227 of the Constitution of India, would not interfere with the discretion exercised by the State Government. The reference to the Act of 1947 is merely to record the facts. It, therefore, cannot be said that the State Government has decided the matter under the Act of 1947 or on the basis of the provisions of the Act of 1947. The challenge to the impugned order on that ground also requires to be rejected. What the State Government has set-aside is the orders of the Assistant Collector and the District Collector upholding the disputed entry no.3527. It, therefore, cannot be read to mean that the disputed entry no.3527 has been cancelled. All that is now required is to hear and decide the

grievance of the respondents on merits keeping in view the various facts and provisions affecting the ownership of the land Block No.393, after considering the rival contentions.

For the aforesaid reasons, no interference is warranted. The petition is dismissed. Rule is discharged. Interim relief is vacated. There shall be no order as to cost.

Mr.Kharadi requests that the interim relief operating pending the petition be extended for a period of six weeks. Request is rejected.

(Ms. R.M.Doshit, J.)

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